

AMENDED IN SENATE MAY 3, 2010

**SENATE BILL**

**No. 982**

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**Introduced by Senator Hollingsworth**  
*(Principal coauthor: Assembly Member Fletcher)*  
*(Coauthor: Senator Ducheny)*

February 8, 2010

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~~An act to amend Section 1872.8 of the Insurance Code, relating to insurance.~~ *An act to add Section 130 to the Code of Civil Procedure, relating to victims' rights, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 982, as amended, Hollingsworth. ~~Insurance: fraud prevention.~~ *Deceased child victim of crime: autopsy information and privacy.*

*Existing law prohibits the making of a copy, reproduction, or facsimile of any kind of photographs, negatives, or print of the body, or any portion of the body, of a deceased person taken by or for the coroner at the scene of death or in the course of a postmortem exam or autopsy made by or caused to be made by the coroner, except for use in a criminal proceeding in this state that relates to the death of that person, or except as a court of this state permits, as specified.*

*This bill would prohibit, upon the request of the family of a deceased person who was under 18 years of age when he or she was a victim of a crime that caused his or her death, the disclosure of the autopsy report and evidence associated with the examination of the victim, except as specified.*

*Because the bill would impose additional duties on local officials, such as the county coroner, the district attorney, or the public defender,*

*relating to preventing the disclosure of this information, the bill would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.*

*This bill would declare that it is to take effect immediately as an urgency statute.*

~~Existing law requires an insurer doing business in this state to pay an annual special purpose assessment to be determined by the commissioner, but not to exceed \$1.00 annually, for each vehicle insured under an insurance policy it issues in this state, in order to fund increased investigation and prosecution of fraudulent automobile insurance claims and economic automobile theft.~~

~~This bill would make technical, nonsubstantive changes to those provisions.~~

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: no. Fiscal committee: ~~no~~<sup>yes</sup>. State-mandated local program: ~~no~~<sup>yes</sup>.

*The people of the State of California do enact as follows:*

- 1     *SECTION 1. This act shall be known and may be cited as the*
- 2     *Deceased Child Victims' Protection and Privacy Act.*
- 3     *SEC. 2. The Legislature hereby finds and declares all of the*
- 4     *following:*
- 5     *(a) (1) Thousands of Californians are murdered each year, a*
- 6     *statistic that has remained steady for over 30 years. The emotional*
- 7     *pain suffered by the families of these lost victims is unimaginable.*
- 8     *That pain is relived through criminal proceedings, which serve as*
- 9     *a troubling reminder of the suffering that loved ones endured*
- 10    *before their lives were taken.*
- 11    *(2) No document is more telling of the specific nature of a*
- 12    *victim's injuries than the autopsy report crafted by a medical*
- 13    *examiner. For the family of a crime victim, the writing and*
- 14    *diagrams contain the details of a loved one's last experiences in*
- 15    *this world.*

1     (3) While criminal proceedings and certain civil actions may  
2     require the use of those documents to satisfy the needs of a  
3     particular suit, there is no compelling interest in public production  
4     and distribution of these documents.

5     (4) Both the California and United States Constitutions have  
6     been construed to vest privacy rights in the families of deceased  
7     victims, prohibiting the unnecessary disclosure of that information.

8     (b) The purpose of this act is to protect the privacy of the  
9     families of deceased victims by allowing them to request that  
10    autopsy reports not be subject to public records act requests.

11    (c) This act is intended to limit the unnecessary dissemination  
12    of autopsy and private medical information concerning a murdered  
13    child by acknowledging a family's right to privacy in those  
14    documents when there is no compelling interest in disclosure. This  
15    act allows families to request that the autopsy report of the victim  
16    be sealed from public inspection. This act does not affect the  
17    dissemination of the reports to law enforcement agents or  
18    prosecutors, and it does not affect their obligations to provide that  
19    information to defendants, with a protective order, in compliance  
20    with state and federal discovery obligations. This act does not  
21    affect the ability of civil litigants, in a suit related to the death of  
22    the victim, from subpoenaing those records after a showing of  
23    good cause to the trial court.

24    SEC. 3. Section 130 is added to the Code of Civil Procedure,  
25    to read:

26    130. (a) Notwithstanding any other law, upon the request of  
27    the family of a deceased victim of a crime who was under 18 years  
28    of age at the time of the crime that caused his or her death, the  
29    autopsy report and evidence associated with the examination of  
30    the victim shall be sealed and not disclosed, except as provided in  
31    this subdivision.

32    (1) Nothing in this section shall prohibit the use of autopsy  
33    reports and evidence during criminal court proceedings.

34    (2) Disclosure of all autopsy information and evidence to law  
35    enforcement or prosecutorial agencies is not limited by this section.

36    (3) Disclosure to the defendant and the defense team in the  
37    course of criminal proceedings or related habeas proceedings is  
38    not limited by this section, except that the defendant and defense  
39    team are prohibited from disseminating all autopsy information

1 *and evidence outside of the defense team, except during criminal*  
2 *court proceedings.*

3 *(4) Civil litigants, in a cause of action related to the victim's*  
4 *death, may obtain copies of autopsy reports and evidence with a*  
5 *court order upon a showing of good cause and proper notice under*  
6 *Section 129.*

7 *(5) Nothing in this section shall abrogate the rights of victims,*  
8 *their authorized representatives, or insurance carriers to request*  
9 *the release of information pursuant to subdivision (f) of Section*  
10 *6254 of the Government Code. However, if a seal has been*  
11 *requested, an insurance carrier receiving items pursuant to a*  
12 *request under that subdivision is prohibited from disclosing the*  
13 *requested items except as necessary in the normal course of*  
14 *business. An insurance carrier shall not, under any circumstances,*  
15 *disclose items received pursuant to subdivision (f) of Section 6254*  
16 *of the Government Code to the general public.*

17 *(6) This provision may not be invoked by a family member who*  
18 *has been charged with or convicted of any act in furtherance of*  
19 *the victim's death.*

20 *(b) For purposes of this section:*

21 *(1) "Evidence" means any object, writing, diagram, recording,*  
22 *computer file, photograph, video, DVD, CD, film, digital device*  
23 *or other item which was collected during or serves to document*  
24 *the autopsy of an individual.*

25 *(2) "Family" means the biological or adoptive parent, foster*  
26 *parent, spouse, registered domestic partner, child, sibling, or*  
27 *closest living relative of the deceased.*

28 *SEC. 4. If the Commission on State Mandates determines that*  
29 *this act contains costs mandated by the state, reimbursement to*  
30 *local agencies and school districts for those costs shall be made*  
31 *pursuant to Part 7 (commencing with Section 17500) of Division*  
32 *4 of Title 2 of the Government Code.*

33 *SEC. 5. This act is an urgency statute necessary for the*  
34 *immediate preservation of the public peace, health, or safety within*  
35 *the meaning of Article IV of the Constitution and shall go into*  
36 *immediate effect. The facts constituting the necessity are:*

37 *In order to prevent, as soon as possible, autopsy information*  
38 *concerning deceased children from being made available to the*  
39 *public, it is necessary that this act take effect immediately.*

1     SECTION 1. ~~Section 1872.8 of the Insurance Code is amended~~  
2 ~~to read:~~

3     ~~1872.8. (a) An insurer doing business in this state shall pay~~  
4 ~~an annual special purpose assessment to be determined by the~~  
5 ~~commissioner, but not to exceed one dollar (\$1) annually, for each~~  
6 ~~vehicle insured under an insurance policy it issues in this state, in~~  
7 ~~order to fund increased investigation and prosecution of fraudulent~~  
8 ~~automobile insurance claims and economic automobile theft.~~  
9 ~~Thirty-four percent of those funds received from ninety-five cents~~  
10 ~~(\$0.95) of the special purpose assessment per insured vehicle shall~~  
11 ~~be distributed to the Fraud Division for enhanced investigative~~  
12 ~~efforts, 15 percent of that ninety-five cents (\$0.95) shall be~~  
13 ~~deposited in the Motor Vehicle Account for appropriation to the~~  
14 ~~Department of the California Highway Patrol for enhanced~~  
15 ~~prevention and investigative efforts to deter economic automobile~~  
16 ~~theft, and 51 percent of that ninety-five cents (\$0.95) shall be~~  
17 ~~distributed to district attorneys for purposes of investigation and~~  
18 ~~prosecution of automobile insurance fraud cases, including fraud~~  
19 ~~involving economic automobile theft.~~

20     ~~(b) (1) The commissioner shall award funds to district attorneys~~  
21 ~~according to population. The commissioner may alter this~~  
22 ~~distribution formula as necessary to achieve the most effective~~  
23 ~~distribution of funds. A local district attorney desiring a portion~~  
24 ~~of those funds shall submit to the commissioner an application~~  
25 ~~detailing the proposed use of any moneys that may be provided.~~  
26 ~~The application shall include a detailed accounting of assessment~~  
27 ~~funds received and expended in prior years, including, at a~~  
28 ~~minimum, all of the following:~~

29     ~~(A) The amount of funds received and expended.~~

30     ~~(B) The uses to which those funds were put, including payment~~  
31 ~~of salaries and expenses, purchase of equipment and supplies, and~~  
32 ~~other expenditures by type.~~

33     ~~(C) The results achieved as a consequence of expenditures made,~~  
34 ~~including the number of investigations, arrests, complaints filed,~~  
35 ~~convictions, and the amounts originally claimed in cases prosecuted~~  
36 ~~compared to payments actually made in those cases.~~

37     ~~(D) Other relevant information as the commissioner may~~  
38 ~~reasonably require.~~

39     ~~A district attorney who fails to submit an application by the~~  
40 ~~deadline set by the commissioner shall be subject to loss of~~

~~1 distribution of the moneys. The commissioner may consider  
2 recommendations and advice of the Fraud Division and the  
3 Commissioner of the California Highway Patrol in allocating  
4 moneys to local district attorneys. A district attorney that receives  
5 funds shall submit an annual report to the commissioner, which  
6 may be made public, as to the success of the program administered.  
7 The report shall provide information and statistics on the number  
8 of active investigations, arrests, indictments, and convictions. Both  
9 the application for moneys and the distribution of moneys shall  
10 be public documents. The commissioner shall conduct a fiscal  
11 audit of the programs administered under this subdivision at least  
12 once every three years. The costs of a fiscal audit shall be shared  
13 equally between the department and the district attorney.  
14 Information submitted to the commissioner pursuant to this section  
15 concerning criminal investigations, whether active or inactive,  
16 shall be confidential. If the commissioner determines that a district  
17 attorney is unable or unwilling to investigate and prosecute  
18 automobile insurance fraud claims as provided by this subdivision  
19 or Section 1874.8, the commissioner may discontinue the  
20 distribution of funds allocated for that county and may redistribute  
21 those funds to other eligible district attorneys.~~

~~22 (2) The Department of the California Highway Patrol shall  
23 submit to the commissioner, for informational purposes only, a  
24 report detailing the department's proposed use of funds under this  
25 section and an annual report in the same format as required of  
26 district attorneys under paragraph (1).~~

~~27 (e) The remaining five cents (\$0.05) shall be spent for enhanced  
28 automobile insurance fraud investigation by the Fraud Division.~~

~~29 (d) Except for funds to be deposited in the Motor Vehicle  
30 Account for allocation to the Department of the California Highway  
31 Patrol for purposes of the Motor Vehicle Theft Prevention Act  
32 (Chapter 5 (commencing with Section 10900) of Division 4 of the  
33 Vehicle Code), the funds received under this section shall be  
34 deposited in the Insurance Fund and be expended and distributed  
35 when appropriated by the Legislature.~~

~~36 (e) In the course of its investigations, the Fraud Division shall  
37 pursue aggressively all reported incidents of probable fraud and,  
38 in addition, shall forward to the appropriate disciplinary body the  
39 names of individuals licensed under the Business and Professions~~

1 Code who are suspected of actively engaging in fraudulent activity  
2 along with all relevant supporting evidence.

3 (f) ~~As used in this section, “economic automobile theft” means~~  
4 ~~automobile theft perpetrated for financial gain, including, but not~~  
5 ~~limited to, the following:~~

6 ~~(1) Theft of a motor vehicle for financial gain.~~

7 ~~(2) Reporting that a motor vehicle has been stolen for the~~  
8 ~~purpose of filing a false insurance claim.~~

9 ~~(3) Engaging in an act prohibited by Chapter 3.5 (commencing~~  
10 ~~with Section 10801) of Division 4 of the Vehicle Code.~~

11 ~~(4) Switching of vehicle identification numbers to obtain title~~  
12 ~~to a stolen motor vehicle.~~